

Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2013

Robert P. Young, Jr.,
Chief Justice

147018

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 147018
COA: 305040
Emmet CC: 10-003388-FH

JOHN DAVID GRATSCH,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 28, 2013 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment holding that offense variable scoring errors are reviewed to determine whether there is adequate evidentiary support for a particular score and whether the sentencing court properly exercised its discretion. As this Court stated in *People v Hardy*, 494 Mich 430, 438 (2013): “Under the sentencing guidelines, the circuit court’s factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo.” (Citing *People v Osantowski*, 481 Mich 103 (2008)). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 25, 2013


Clerk